



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RTID 0648-XR071**

**Endangered and Threatened Species; Initiation of a Status Review for Queen Conch under the Endangered Species Act (ESA)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of initiation of a status review; request for information.

**SUMMARY:** We, NMFS, announce the initiation of a status review of queen conch (*Strombus gigas*) to determine whether listing the species as endangered or threatened under the Endangered Species Act (ESA) is warranted. A comprehensive status review must be based on the best scientific and commercial data available at the time of the review. Therefore, we are asking the public to provide information on the queen conch that will inform our status review.

**DATES:** We must receive your information no later than *[insert date 60 days after the date of publication in the **FEDERAL REGISTER**]*

**ADDRESSES:** You may submit information for us to use in our status review, identifying it as “Queen Conch Status Review (0648-XR071),” by either of the following methods:

*Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0141](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0141), click the “Comment Now” icon, complete the required fields, and enter or attach your comments.

*Mail or hand-delivery:* Submit written comments to Calusa Horn, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Information sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All information received is a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Calusa Horn at the above address, by phone at 727-551-5782 or [Calusa.Horn@noaa.gov](mailto:Calusa.Horn@noaa.gov), or Maggie Miller, 301-427-8457 or [Margaret.H.Miller@noaa.gov](mailto:Margaret.H.Miller@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

This notice announces our status review of queen conch under the ESA. On February 27, 2012, we received a petition from WildEarth Guardians to list the queen conch as threatened or endangered throughout all or a significant portion of their range under the ESA. We determined that the petitioned action may be warranted and published a positive 90-day finding in the **Federal Register** (77 FR 51763; August 27, 2012). After conducting a status review, we determined that listing queen conch as threatened or endangered under the ESA was not warranted and published our determination in the **Federal Register** (79 FR 65628; November 5, 2014). In making that determination, we first concluded that the queen conch was not presently in danger of extinction, nor was it likely to become so in the foreseeable future. We also evaluated whether there was a portion of the queen conch’s range that was “significant,” applying the definition of that term from the joint U.S. Fish and Wildlife Service/NMFS Policy on Interpretation of the Phrase “Significant Portion of Its Range” (SPR Policy (79 FR 37580;

July 1, 2014)), and concluded that available information did not indicate any “portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.”

WildEarth Guardians and Friends of Animals (Plaintiffs) filed suit on July 27, 2016, in the U.S. District Court for the District of Columbia, challenging our decision not to list queen conch as threatened or endangered under the ESA. On August 26, 2019, the court vacated our determination that listing queen conch was not warranted and remanded the determination back to the NMFS, based on our reliance on the SPR Policy’s definition of “significant,” which was vacated nationwide in 2018 (though the policy otherwise remains in effect) as a result of litigation involving an unrelated listing determination by the United States Fish and Wildlife Service, of the Department of the Interior. (*Desert Survivors v. U.S. Dep’t of Interior*, 321 F. Supp. 3d 1011 (N.D. Cal. 2018)). In light of this ruling and considering the passage of time since the completion of the previous status review in 2014, we will conduct a new status review. This notice serves to solicit new and/or additional information for NMFS to consider in the new status review.

### **Determining if a Species Is Threatened or Endangered**

Paragraph (a)(1) of section 4 of the ESA (16 U.S.C. 1533 *et seq.*) requires that we determine whether a species is endangered or threatened throughout all or a significant portion of its range based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting

its continued existence. Paragraph (b) of ESA section 4 requires that our determination be made based on the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation to protect such species.

### **Public Solicitation of New Information**

With this notice, we commence a status review of queen conch to determine whether listing the species as endangered or threatened under the ESA is warranted. To ensure that our review of queen conch is informed by the best available scientific and commercial information, we are opening a 60-day public comment period. For the status review to be complete and based on the best available scientific and commercial information, we request information on the species from governmental agencies, the scientific community, industry, and any other interested parties. We seek information on: (1) species abundance; (2) historical and current population trends; (3) landings and trade data; (4) distribution and population spatial structure; (5) reproduction and population densities; (6) larval dispersal and population connectivity; (7) genetics; (8) disease and parasites; (9) habitat stressors; and (10) the adequacy of existing regulatory mechanisms.

Our consideration of conservation measures, regulatory mechanisms, and other protective efforts will be guided by the Services “Policy for Evaluation of Conservation Efforts When Making Listing Decisions” (PECE) (68 FR 15100; March 28, 2003). The PECE established criteria to ensure the consistent and adequate evaluation of conservation efforts when making listing decisions under the ESA. This policy may also guide the development of conservation efforts that sufficiently improve a species’ status to make listing the species as threatened or endangered unnecessary. Under the PECE, the adequacy of conservation efforts is evaluated in terms of the certainty of their implementation and the certainty of their effectiveness. Criteria for

evaluating the certainty of implementation include whether: the necessary resources are available; the necessary authority is in place; an agreement is formalized (*i.e.*, regulatory and procedural mechanisms are in place); there is a schedule for completion and evaluation; for voluntary measures, incentives to ensure necessary participation are in place; and there is agreement of all necessary parties to the measure or plan. Criteria for evaluating the certainty of effectiveness include whether the measure or plan: includes a clear description of the factors for decline to be addressed and how they will be reduced; establishes specific conservation objectives; identifies necessary steps to reduce threats; includes quantifiable performance measures for monitoring compliance and effectiveness; employs principles of adaptive management; and is certain to improve the species' status at the time of listing determination. We request that any information submitted with respect to conservation measures, regulatory mechanisms, or other protective efforts that have yet to be implemented or show effectiveness explicitly address these criteria in the PECE.

If you wish to provide your information for this status review, please submit it as described in the **ADDRESSES** section above. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

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National Oceanic and Atmospheric Administration

